

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings  
Under Chapter 7

LAWRENCE MARION RICH  
NORMA ROSE RICH

Case No. 98-40262

Debtor(s).

OPINION

This matter is before the Court on a motion by Ford Motor Credit Company ("Ford"), to file a late claim. Creditors, Banterra Bank and Illinois One Bank, as well as the United States Trustee, object to Ford's motion, asserting that Ford's claim is untimely and should be disallowed.

Ford acknowledges that it failed to comply with the claims bar date by filing a formal proof of claim. However, Ford requests the Court to find that certain documents filed by it during the course of the debtors' case constitute an informal proof of claim, which may be amended at this time.

Courts have developed the doctrine of "informal proof of claim" to ameliorate the harsh consequences of strictly enforcing a claims bar date. Under this doctrine, something other than a formal claim is deemed to be an "informal" claim that may be amended after the claims bar date has past. The Seventh Circuit Court of Appeals, in Matter of Wilkens, 731 F.2d 462 (7th Cir. 1984) and In re Unroe, 937 F.2d 346 (7th Cir.

1991), approved application of the "informal claim" doctrine in certain instances. As stated in Wilkens, "the general rule is that [an informal] claim arises where the creditor evidences an intent to assert its claim against the debtor. . . . A creditor may manifest its intent to hold a debtor liable in many ways, and the particular facts of a case will determine whether such a de facto claim has been made." Wilkens, 731 F.2d at 465.

In the present case, Ford, as the debtors' major creditor, took an active role in every phase of the proceedings, from commencement of the debtors' Chapter 11 proceeding in February 1998 to conversion of the case in August 1998 and subsequent liquidation of the debtors' estate by the Chapter 7 trustee. While Ford initially appeared to be fully secured by its interest in the debtors' dealership, it became evident shortly after conversion of the case that the value of its collateral was insufficient to meet Ford's claim.

On October 9, 1998, well before the claims bar date of January 12, 1999, Ford filed a "stipulation for abandonment of property," signed by both counsel for the debtors and the Chapter 7 trustee, which stated that the "value of the collateral pledged to [Ford] is less than the debt owed to this creditor," resulting in abandonment of the property from the estate. (Doc. # 66). On December 8, 1998, Ford objected to the

debtors' motion to dismiss the Chapter 7 case, asserting that "liquidation of the assets of the debtors through this bankruptcy will be more orderly, simple and less expensive for . . . the creditors than liquidation through various state court actions" and adding that ". . . the creditors have incurred expense and spent time getting this case to the point of orderly liquidation so that dismissal of the case would be prejudicial." (Doc. # 89, emphasis added). The Court finds that, by these filings, Ford informed the trustee, the debtors, and other creditors that its claim against the debtors was partially unsecured and that it intended to pursue this deficiency through the process of orderly liquidation of the debtors' estate.

The Court notes further that when the debtors sought leave to file late claims on behalf of other creditors, the only creditor to object to this late filing was Ford, who requested information from the debtors concerning the nature of these claims and whether they could properly be asserted against the Chapter 7 estate. In so objecting to ensure that these claims were valid, Ford again took an active role in furtherance of its status as unsecured creditor. Ford's objection provides additional indication that Ford intended to pursue its own claim against the estate.

While the Court has reservations about the doctrine of

"informal proof of claim" and believes it should be applied sparingly, it would be inequitable under the facts of this case to preclude Ford, whose conduct throughout the case left no doubt it intended to pursue its claim to the fullest extent, from being allowed the opportunity to assert and prove the amount of its unsecured claim. Accordingly, the Court construes Ford's "motion to file late claim" as a "motion to amend informal claim," which was timely made prior to the claims bar date, and finds that Ford's motion should be granted. This ruling does not, of course, preclude other creditors or interested parties from filing objections to the amount of Ford's unsecured claim, and an appropriate objection period will be set for this purpose.

SEE WRITTEN ORDER.

ENTERED: December 21, 1999

/s/ KENNETH J. MEYERS  
UNITED STATES BANKRUPTCY JUDGE

